SUPREME COURT OF FLORIDA
CASE #: SC01-1713

LOWER TRIBUNAL #: 5D00-2878
DISTRICT OF ORIGIN: FIFTH

COUNTY OF ORIGIN: ORANGE
ORANGE COUNTY #: PR97-1075

BRITTANY WIGGINS AND MARQUIS WIGGINS, MINORS,

Petitioners

vs.

THE ESTATE OF APRIL BROWN WRIGHT,

Respondent
_____/

PETITIONERS' INITIAL BRIEF

_____

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TABLE OF CONTENTS

TABLE OF CITATIONS

STATEMENT OF THE CASE AND FACTS

Walter C. Wright was the surviving spouse of April Wright, who died due to alleged medical malpractice. They had two minor children. Mrs. Wright also had two minor children by a previous marriage to Wiggins. [R-347] Shortly after Mrs. Wright's death, Wright retained Nichols, and signed a contingency fee contract as "potential personal representative" [PR] of the estate. Wright was later appointed PR and signed a second contract as PR, as an individual, and as the natural guardian of his two children. [R-347, 348, 1259]

At the same time that Wright retained Nichols, Wiggins retained Schwichtenberg to represent his two minor children. [R-348] The contingency fee contracts signed by Wright with Nichols, and by Wiggins with Schwichtenberg, contained the same fee percentages: 33.33% of the first million, and 30% of the second million of a pre-suit recovery. [R-347,348] These percentages are in compliance with rule 4-1.5, Rules Regulating the Florida Bar.

Schwichtenberg made her representation known to Nichols early on, [R-1136] and the lawyers regularly corresponded about the potential wrongful death action and the proposed settlement. [R-1136-1142] Schwichtenberg, on behalf of her clients, approved a lump sum settlement for $1.35 million. [R-952] The wrongful

death claim settled during the medical malpractice pre-suit screening period of F.S. §766.106, and was never filed as a lawsuit. [R-349]

Wright proposed a settlement scheme that allotted 80.62% of the settlement to himself and his children, 19.38% to the Wiggins children, and nothing to the estate. [R-349] Schwichtenberg objected to this scheme and a hearing was held during which evidence and testimony were presented. [R-944 to 980] The probate court rejected Wright's settlement scheme, and awarded each survivor 20%. Nothing was awarded to the estate. [R-82,83]

Wright appealed the order, which was defended by Schwichtenberg through briefs and oral argument. The Fifth District affirmed the probate court's division of the settlement. see Wright v. Wiggins 751 So.2d 598 (Fla. 5th DCA 2000). Schwichtenberg's efforts and representation doubled her clients' recovery. [R-1143]

During the pendency of Wright's appeal to the Fifth District, Nichols took the maximum contingency fee on the pre-suit settlement, being 33.33% of $1,000,000.00, and 30% of $350,000.00. [R-250,251] This fee was later approved by the probate court in the same order which denied Schwichtenberg fees, dated August 7, 2000. [R-1339 to 1345]

Schwichtenberg filed a Motion for Attorney's Fees, arguing that under the case law a portion of the fee taken by Nichols should be used to satisfy her clients' contractual fee obligations to her. [R-347 to 551]

Schwichtenberg's Motion for Attorney's Fees resulted in two days of hearings, during the course of which Schwichtenberg established her efforts to: collect medical records, review medical records, generate a chronology of medical treatment [R-1139, 1140], locate an expert to review those records, consult with an expert, develop knowledge of the case so that any settlement discussions could be considered based on the strength or weakness of the case [R-1319], represent her clients throughout the settlement and negotiation process, answer Nichols' legal questions regarding arbitration and medical malpractice, answer discovery propounded during the pre-suit process [R-1142], and discuss settlement negotiations. [R-1138, 1152, 1153]. Schwichtenberg established that Nichols had never met with, questioned, or consulted with her clients. [R-1153].

Lastly, Schwichtenberg presented expert witness testimony establishing her right to a fee. [R-1156 et seq.] The expert, Ton Lagrone, Esq., testified that Nichols had an incurable conflict with the Wiggins children, that Nichols did not represent the Wiggins children, and that Nichols had no right to

a fee on the Wiggins children's recovery. [R-1167, 1168, 1170, 1172] Lagrone testified that Nichols' fee was the absolute maximum fee under the Florida Bar Rules [R-1166], and the maximum allowable fee under his own contract. [R-1166] Finally, Lagrone testified that the estate never recovered "a penny," and the PR recovered a settlement solely for the survivors. [R-1271]

The probate court found that Schwichtenberg "is clearly entitled to compensation for those services as she did represent [her clients] at the apportionment hearing and represented them adequately." [R-950] However, since Schwichtenberg testified that she would not accept a fee out of the net awards made to the Wiggins children, and would not subject her clients to a double fee, she was not awarded any fee. [R-1345]

Schwichtenberg appealed, arguing that the order was not supported by the Wrongful Death Act, was in conflict with other district's decisions, and required her clients to pay an excess fee in violation of the Rules Regulating the Florida Bar. The Fifth District found that Schwichtenberg "performed a valuable service to her clients by assuring them a greater share of the distribution than they would have otherwise received" and that she was entitled to compensation for her efforts. However, her payment should come directly from her clients' recovery. She could not be paid from the maximum fee taken by Nichols. see

Wiggins v. Wright 786 So.2d 1247, 1249 (Fla. 5th DCA 2001).

The Fifth District found that the recipient of the settlement was the estate, rather than the individual survivors. Id. at 1248. Accordingly, the Fifth District characterized the various children as "beneficiaries of the estate" rather than survivors. This position is not supported by the facts, the law, or the record.

On August 15, 2000, Wright filed the Amended Final Accounting of April Wright's Estate, which included all estate transactions from June 10, 1997 to July 31, 2000. [R-671 to 679] The Accounting did not list the wrongful death settlement in the estate. The settlement is not listed in Receipts, Disbursements, Distributions, Cash, or Assets. [R-673 to 679] Since no funds were requested for or ordered to the estate, it received nothing from the settlement.

Further, the Amended Final Accounting indicated that no fees were paid to the attorney for the PR. [R-678] The attorney's fee taken by Nichols was taken solely as attorney for the survivors, two of whom he did not represent.

The Fifth District distinguished a Fourth District case "with facts similar to the case at issue," finding that Nichols represented only the estate, and not the individual "beneficiaries," and thus did not have a conflict. Id. at 1249.

The dissent found that Nichols did represent the individual survivors; that Nichols did have a conflict which prevented him from taking the complete fee; and that the Fourth District case was not distinguishable. Id. at 1252. The dissent found that Schwichtenberg should be paid and should receive her fee from the fee taken by Nichols. Id. at 1252. The dissent's position was supported by two decisions from the Fourth District.

Petitioner requested the review and jurisdiction of the Supreme Court, citing conflict between the Third, Fourth, and Fifth Districts; a misapplication of the Wrongful Death Act, F.S. §768.26; and a contrary result to rule 4-1.5. The Supreme Court accepted jurisdiction and this brief ensues.

SUMMARY OF ARGUMENT

The Fifth District has ordered non-PR survivors in a wrongful death claim to pay fees to both the PR's attorney and also to their own attorney. This results in the imposition of a double fee in excess of that allowed by rule 4-1.5, Rules Regulating the Florida Bar. The Florida Supreme Court has jurisdiction due to a conflict between the districts in the interpretation of the Wrongful Death Act, F.S. §768.26, and reviews the proceedings under the de novo standard of appellate review.

The Fifth District's reading of F.S. §768.26 allows for the imposition of a fee in excess of that allowed by rule 4-1.5. This reading subverts the stated premise of the Wrongful Death Act, which is to prevent preferential treatment of one or more beneficiaries in the disposition of their claims. Preferential treatment is seen here, where three survivors pay one attorney's fee, and two survivors pay two attorneys' fees.

The Fifth District's decision is also in contravention of in pari materia, which requires F.S. §768.26 and rule 4-1.5 to be read together, and to be construed so as to harmonize with each other. The Third and Fourth Districts have read F.S. §768.26 and rule 4-1.5 in pari materia, and have reached decisions which do not impose a double fee on non-PR survivors

who have their own attorneys. In the Adams and Perez cases, other Districts held that a non-PR survivor cannot pay a fee to an attorney with whom there is no signed contract, and with whom there is a conflict. In Adams, as in this case, the conflict is seen where the PR's attorney argued against recovery by the non-PR survivors. The Perez case held that F.S. §768.26 does not apply to pre-suit wrongful death settlements. Here, in a pre-suit wrongful death settlement, the Fifth District relied on F.S. §768.26 as the statutory support for their decision.

In the Catapane and Perris decisions, the Fourth District found a conflict where the PR's attorney had argued against recovery by the non-PR survivors. There, all attorneys were required to divide the maximum fee according to their efforts, representation, and benefit achieved for their clients.

None of the other Districts' decisions reached a result which imposed a fee in excess of that allowed by rule 4-1.5.

The only decision which imposes an excess fee is the one being appealed to this Court. This decision has a chilling effect upon the rights of non-PR survivors in the Fifth District to seek independent counsel.

Petitioners urge the Supreme Court to overturn the Fifth District, and to adopt either the Adams/Perez approach or the Catapane/Perris approach to determine the attorneys fees to be

imposed upon non-PR survivors in a pre-suit wrongful death settlement.

ARGUMENT

IN A WRONGFUL DEATH CLAIM, WHERE THERE ARE SEPARATE ATTORNEYS FOR THE PR/SURVIVOR AND THE NON-PR SURVIVORS, SHOULD THE NON-PR SURVIVORS PAY ATTORNEY'S FEES TO BOTH THE PR'S ATTORNEY AND THEIR OWN ATTORNEY, RESULTING IN A FEE IN EXCESS OF THE FLORIDA BAR RULES, OR SHOULD THE ATTORNEYS FOR ALL SURVIVORS DIVIDE THE TOTAL FEE BASED ON THEIR REPRESENTATION AND EFFORTS?

The Supreme Court has accepted jurisdiction under Rule of Appellate Procedure 9.030(a)(2)(A), based on a conflict between the districts in the interpretation of the Wrongful Death Act, at Florida Statutes §768.26, and the interpretation of rule 4-1.5, Rules Regulating the Florida Bar.

The applicable standard of appellate review is de novo. De novo, or "free review," see Federal Standards of Review §2.14 Vol. I at 276, means simply that although the trial court is presumed to be correct, the appellate court is free to decide the legal issue differently without paying deference to the trial court's review of the law. The "standard of review for a pure question of law is de novo." Armstrong v. Harris 773 So.2d 7 (Fla. 2000). "The construction of statutes, ordinances, contracts, or other written instruments, is a question of law that is reviewable de novo, unless their meaning is ambiguous." Dixon v. City of Jacksonville 774 So.2d 763 (Fla. 1st DCA 2000). Because issues of statutory construction and interpretation of a written instrument can be equally

determined by either level of court, the de novo standard is appropriate for such review. See, e.g., Racetrac Petroleum, Inc., v. Delco Oil, Inc. 721 So.2d 376 (Fla. 5th DCA 1998) (statutory construction); Angell v. Don Jones Ins. Agency, Inc. 620 So.2d 1012 (Fla. 2nd DCA 1993) (interpretation of employment contract).

In Wiggins v. Wright 786 So.2d 1247 (Fla. 5th DCA 2001) the Fifth District determined that while the attorney for non-PR survivors [Schwichtenberg] was entitled to a fee for her representation, that fee should come from the survivors, themselves. Those survivors had already paid the maximum fee allowed by the Florida Bar Rules to the PR's attorney [Nichols], even though Nichols had tried to minimize their recovery. The Fifth District reasoned that this was not a double fee, as the fee paid to Nichols was for his services on behalf of the estate, and Petitioners "are entitled to share only in the assets of the estate after legal expenses have been paid." However, the estate did not receive any assets or funds from the settlement.

Wiggins misreads and misapplies the Wrongful Death Act, at F.S. §768.26, resulting in excess attorney's fees being imposed upon Petitioners, in violation of rule 4-1.5. The specific provision of the Wrongful Death Act reads:

> Attorneys' fees and other expenses of litigation shall be paid by the personal representative and deducted from the awards to the survivors and the estate in proportion to the amounts awarded to them, but expenses incurred for the benefit of a particular survivor or the estate shall be paid from their awards.

One of the stated purposes of the Wrongful Death Act is to prevent preferential treatment of one or more beneficiaries in the disposition of their claims. Hess v. Hess 758 So.2d 1203 (Fla. 4th DCA 2000), Williams v. Infinity Ins. Co. 745 So.2d 573 (Fla. 5th DCA 1999); Funchess v. Gulf Stream Apartments of Broward County, Inc. 611 So.2d 43 (Fla. 4th DCA 1992). Yet Wiggins gives preferential treatment to those survivors represented by the PR's attorney, and is to the detriment of those survivors who chose their own attorney.

Here, five survivors receive equal portions of the settlement. Three of them only pay one attorney's fee. The other two must pay two separate attorney's fees, resulting in fees in excess of that allowed by rule 4-1.5. The Wrights receive preferential treatment. This violates the stated purpose of the Wrongful Death Act, is in violation of rule 4-1.5, and contravenes a basic rule of statutory construction.

The basic rule of statutory construction is that statutes which relate to the same or closely related subjects are regarded as in pari materia, and must be construed together and

compared with each other. Ferguson v. State 377 So.2d 709, 711 (Fla. 1979), Alachua County v. Powers 351 So.2d 32, 40 (Fla. 1977). This doctrine requires courts to construe related statutes together so that they will illuminate each other and are harmonized. Singleton v. Larson 46 So.2d 186 (Fla. 1950). A construction which avoids a potential conflict between statutes is to be used when possible. Wakulla County v. Davis 395 So.2d 540, 542, 543 (Fla. 1981).

Wiggins requires non-PR survivors to pay an attorney's fee both to their own counsel, and to another counsel with whom they did not have a contract, and who had a conflict as shown by the efforts to minimize their recovery. The total attorney's fee thus charged is in excess of that allowed by the Rules Regulating the Florida Bar. Rule 4-1.5 limits a contingent attorney fee on a pre-suit settlement to 33.33% of any recovery up to $1 million and 30% of any portion of the recovery between $1 million and $2 million. Under the doctrine of in pari materia, the Wrongful Death Act cannot be read with rule 4-1.5 to allow the Fifth District's result.

The Wiggins children paid the maximum fee to the PR's attorney, but if they are to satisfy their contractual obligation to their own attorney, they must pay an additional fee.

The assertion that the Wiggins children are not subject to a double fee is disproven by a simple comparison of each survivor's award. The settlements of Wright children and their father are reduced only by the fee to Nichols, their attorney. Yet the Wiggins children's settlements are reduced by the fee paid to Nichols, as well as the fee they are contractually obligated to pay to Schwichtenberg. The Wrights pay one attorney; the Wiggins' pay two attorneys. This is a double fee, and a fee in excess of what rule 4-1.5 allows.

In pari materia requires construction of F.S. §768.26 and rule 4-1.5 together, and mandates the harmonization of their provisions regarding attorney's fees. To do so, there must be a recognition that the maximum fee allowable by rule 4-1.5 may ultimately be divided between the attorneys for all survivors. Such a division may result in each attorney receiving less than their contingent fee contract. However, the division will prevent any survivor from paying more than the maximum fee mandated by the Rules Regulating the Florida Bar. The most compelling concern must be fairness to a client, rather than enrichment of an attorney.

Other Districts have read F.S. §768.26 and rule 4-1.5 in pari materia, and reached decisions which do not impose a double fee on the non-PR survivors. The Fifth District's decision in

Wiggins is in direct conflict with Adams v. Montgomery, et al. 555 So.2d 957 (Fla. 4th DCA 1990), Perez v. George, Hartz, et al. 662 So.2d 361 (Fla. 3rd DCA 1995), Moreno v. Allen 692 So.2d 957 (Fla. 3rd DCA 1997), Catapane v. Catapane 759 So.2d 9 (Fla. 4th DCA 2000), and Perris v. Perris 764 So.2d 870 (Fla. 4th DCA 2000).

Adams, Perez, Moreno, Catapane, Perris, and Wiggins all involve wrongful death claims where the decedent's legacy includes a fractured family, with competing claims in the wrongful death proceedings. Wiggins is in direct conflict with the Fourth and the Third District's decisions.

In Adams, the widow/PR and her step-daughter had different lawyers. The widow/PR's lawyers refused to represent the step-daughter, and argued that she should receive nothing from the settlement. When the daughter was awarded funds from the settlement, the widow/PR's lawyers petitioned for fees on the entire settlement, including the step-daughter's portion.

The Fourth District determined that the widow/PR's lawyers were not entitled to fees on the step-daughter's settlement as they did not represent the step-daughter; had no fee contract; and had a conflict, as they had attempted to exclude her from the settlement and minimize her recovery.

Adams is in direct conflict with Wiggins. Here, Wright was

represented by separate counsel from the Wiggins children. Wright sought to minimize the Wiggins' recovery, to no avail. Nichols did not represent the Wiggins children, had no fee contract with them, and had a conflict, as he had attempted to minimize their recovery. Despite similar facts, the Fifth District awarded Nichols a fee from the Wiggins' settlement, and gave Schwichtenberg a fee only in addition to Nichols' fee. This is in direct conflict with Adams.

This case is also in direct conflict with Perez and Moreno, two Third District decisions arising from the same child's death, where the estranged parents had hired separate attorneys. Perez found the mother's firm was not entitled to fees on the father's settlement, as they did not represent the father, and since rule 4-1.5(f)(2) requires a signed contract for a fee. Both parents had been appointed as co-PR's of the estate. Perez at 363.

Perez further conflicts with Wiggins in that Perez held that F.S. §768.26 does not apply to pre-suit settlements of wrongful death claims. Perez at 364, Footnote 4. Both Perez and Wiggins settled without litigation, but Wiggins relies expressly on F.S. §768.26 to justify its holding. Without F.S. § 768.26, there is no statutory support for the Wiggins decision.

Following Perez, in Moreno, the Third District held that the

mother's firm was required to pay interest to the estate for that portion of attorney's fees which it had taken, but to which it was not legally entitled as it did not represent the father.

Here, the Fifth District required the Wiggins children to pay a fee to an attorney who did not represent them, and with whom they did not have a signed fee contract. Further, Wiggins relies in error on F.S. §768.26 to justify its holding. This directly conflicts with Perez and Moreno.

The Fifth District is also in direct conflict with Catapane. There, the widow/PR hired a separate firm than her step-daughter. The PR's firm sought a fee on the entire settlement, even though the step-daughter received over 73% of the funds. The Fourth District held that the PR's firm was entitled to be paid their fee from the entire settlement, but that their fee should be reduced, since the widow/PR's firm had a conflict of interest with the step-daughter, could not represent her on liability and damages, and were thus not entitled to the maximum fee. The Fourth District found that

> If [widow/PR's attorneys] were allowed the maximum fee under rule 4-1.5 while their conflict of interest required [step-daughter] to hire her own counsel on damages, [step-daughter] would be exposed to having to pay a fee in excess of that allowed by rule 4-1.5. Because [widow/PR's attorneys] could not represent [step-daughter] on damages, they are not entitled to their full fee on [her] portion of the recovery.

Catapane at 11.

The Fourth District remanded the matter for reconsideration of the attorney's fees award, and held that the step-daughter's attorney's fee "cannot exceed a fee authorized by rule 4-1.5." Catapane at 12.

Catapane is in direct conflict with Wiggins. Here, Nichols had a conflict of interest with the Wiggins children, and could not represent them on both liability and damages. Despite this conflict, the Wiggins children are required to pay a full contingency fee to him, and an additional fee to their own attorney. Since Nichols has already taken the maximum fee, they will pay fees in excess of what rule 4-1.5 allows.

Wiggins follows the dissent of Catapane, where Judge Blackwell White held:

> While survivors may prefer to hire independent counsel to protect their interests during the allocation of the settlement fund in a wrongful death claim, they should bear this added expense individually. Catapane at 13.

But the majority in Catapane recognized that the dissent's approach would require a client to pay fees to an attorney who has not been chosen by the client, where there is no fee contract, and with whom the client has a conflict. Most importantly, the Catapane majority held that the dissent's approach would result in a fee in excess of rule 4-1.5.

Catapane at 11.

Wiggins has rejected the Catapane majority, to agree with the dissent. The result expected and expressly rejected by the Catapane majority has ensued: the survivors are required to pay a fee in excess of what rule 4-1.5 allows.

Perris is also in direct conflict with the Fifth District's decision. In Perris, estranged parents brought wrongful death proceedings for the death of their son. They could agree neither on the division of the settlement between them, nor on the payment of attorney's fees. The Fourth District remanded for a determination of division, and for imposition of attorney's fees in keeping with the procedure set forth in Catapane.

In their holding, the Fourth District reached an express finding which directly applies to Wiggins:

> Extensive litigation on apportionment may well justify a larger fee to the mother’s attorney than if the apportionment issue were settled without extensive attorney involvement. Perris at 872.

Surely the actions of Schwichtenberg constitute “extensive attorney involvement,” which would justify the “larger fee” which Perris envisions. Certainly Perris does not support the imposition of a double fee on the Wiggins children.

Perris is in direct conflict with the Fifth District, as the Catapane procedure was not implemented.

Petitioners urge the Supreme Court to set a clear standard for attorneys fees in these cases. Three different approaches have been used by the Districts. The Adams and Perez approach allows no fee if there is no contract, particularly where a conflict exists. This approach finds that F.S. §768.26 does not apply to these pre-suit wrongful death settlements. Using the Adams/Perez approach, no client is charged a fee in excess of what rule 4-1.5 allows.

The second approach is seen in Catapane and Perris, where a fee can be awarded in the absence of a contract. However, the fee is based solely on the representation on liability, and recognizes the conflict on damages. The total fee is divided between all the attorneys for all the survivors based on their representation, efforts, and net benefit achieved for their clients. As with the Adams/Perez approach, the Catapane/Perris approach prevents a client from paying a fee in excess of what rule 4-1.5 allows.

The last approach is seen in Wiggins, which follows the Catapane dissent, and awards a fee in the absence of a contract and in the presence of a conflict. F.S. § 768.26 is read to support this finding, and to apply to pre-suit wrongful death settlements. The fees thus imposed are in excess of what rule 4-1.5 allows.

Of the three approaches, the Wiggins approach is most burdensome to the survivors as it imposes a double fee, or fee in excess of what rule 4-1.5 allows. Wiggins is not supported by the stated purpose of the Wrongful Death Act, gives preferential treatment to PR-survivors over non-PR survivors, is in contravention of in pari materia statutory construction, and is in violation of rule 4-1.5.

At a minimum, Petitioners urge the Supreme Court to recede from Wiggins and to approve the Catapane/Perris approach. There is also support for the Supreme Court to recede completely to the Adams/Perez approach, and to find that where there is no contract, there can be no fee.

If the Supreme Court applies the Adams/Perez approach to these facts, then Nichols would refund to the Wiggins children the fee he took on their portion of the settlement. Schwichtenberg's fee of 33.33% would then be taken on the Wiggins' children's gross recovery.

If the Supreme Court applies the Capatane/Perris approach to these facts, then Schwichtenberg would be paid a fee from the total fee already taken by Nichols. The amount of that fee would be determined by the probate court, and should reflect that Schwichtenberg's efforts doubled her client's recovery from 19.38% to 40%. Schwichtenberg would then be entitled to a fee

on that increase, or 33.33% of the 20.62% benefit she achieved for her clients.

Regardless of whether the Supreme Court applies the Adams/Perez approach or the Catapane/Perris approach, the Wiggins children will not be required to pay a fee in excess of that allowed by rule 4-1.5.

Ultimately, there is no case, no rule, and no statute, which support the Fifth District's decision. Following Wiggins, survivors in the Fifth District who seek independent counsel are required to sign unethical, illegal contracts, wherein they agree to pay a fee in excess of that allowed by the Rules Regulating the Florida Bar. Non-PR survivors in the Fifth District are at a distinct disadvantage to those in the Fourth and Third Districts.

The Fifth District’s holding has a chilling effect upon survivors who seek independent counsel, and do not wish to hire the counsel chosen by the PR. Without an independent attorney, a survivor cannot ensure a fair settlement, unless they are willing to be financially penalized for doing so.

Petitioners urge the Supreme Court to set a clear standard for the recovery of attorney’s fees in these cases, and to overturn the Wiggins decision.

CONCLUSION

The Supreme Court should overturn the Wiggins decision, and should apply either Adams/Perez or Catapane/Perris to set a clear standard for the recovery of attorney's fees to be imposed on non-PR survivors in pre-suit settlements of wrongful death claims.

The standard should be in compliance with both rule 4-1.5 and F.S. §768.26. No survivor should be required to pay attorney's fees in excess of that allowed by rule 4-1.5.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this document has been served by U.S. Mail on Jack B. Nichols, Esq., 801 N. Magnolia Avenue, Suite 414, Orlando, FL 32803; Jackson O. Brownlee, Esq., P.O. Box 2254, Orlando, Florida 32802; and G. Charles Wohlust, Esq., P.O. Box 941690, Maitland, FL, 32794, this 1st day of May, 2002.

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CERTIFICATE OF COMPLIANCE

Comes Now the Attorney for the Petitioners, and pursuant to Florida Rules of Appellate Procedure 9.210(a)(2) certifies that this brief complies with the font requirements of this rule. This brief is printed in Courier New 12-point font.

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Linda L. Schwichtenberg, Esq.